

anticompetitive effects either in the building-specific markets for Type I wholesale special access services, or derivatively in the MSA-wide market for SBC's special access services.

49. We note that certain commenters have submitted special access market share and HHI calculations for selected MSAs in SBC territory to demonstrate that the merger will lead to competitive harm for those MSAs.<sup>137</sup> We find certain weaknesses with this analysis and data, however. First, we share some of the concerns expressed by the Applicants concerning the reliability of the underlying data.<sup>138</sup> In addition, it appears that the commenters' market share calculations include all capacity, regardless of whether it is used to provide wholesale special access or to support AT&T's own retail services.<sup>139</sup> Finally, as discussed above, we find that any increase in SBC's MSA-wide special access prices would only result from a reduction in competition in building specific markets for Type I or Type II wholesale special access services. Because we find that the consent decree adequately remedies any likely anticompetitive effects on Type I wholesale special access services and that the merger is unlikely to result in anticompetitive effects in the provision of Type II wholesale special access services, we find that no additional measures are required to protect against increases in SBC's special access prices resulting from the merger.

50. We also reject commenters' assertions that AT&T, because of its extensive local transport network, has a unique ability to handle short and intermediate haul traffic.<sup>140</sup> As shown above, AT&T faces competition from many other competitive LECs, which also possess extensive local transport facilities and collocations.<sup>141</sup> As explained above, local fiber facility maps show that there are other

<sup>137</sup> See, e.g., SAVVIS/XO July 29 *Ex Parte* Letter, Attach. at 9-11.

<sup>138</sup> See, e.g., SBC/AT&T June 24 *Ex Parte* Letter at 5-6; SBC/AT&T Aug. 1 *Ex Parte* Letter, App. B at 7-8.

<sup>139</sup> We reject the national private line market share calculations submitted by commenters. See Letter from Thomas W. Cohen, Counsel for XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 13 (filed Sept. 21, 2005) (XO Sept. 21 *Ex Parte* Letter) (attached excerpts from a January 2004 Yankee Group study). As an initial matter, it is not clear what data Yankee Group used to calculate market shares. For example, SBC in its document production, supplied a Yankee Group report, which suggested that, in the SBC region SBC has [REDACTED]% of market share, with AT&T having [REDACTED]% based on revenue. SBC Info. Req., Exh. 5(b)(5) (The Yankee Group, *SBC Special Access Study: Wholesale Private Line*, Nov. 2004 at 21). However, the Applicants dispute the report's estimates, asserting that it overstates AT&T revenue. SBC/AT&T July 15 *Ex Parte* Letter at 3-5. Because we expect AT&T to be in the best position to know its revenues, we believe that the revenue submitted by AT&T in response to the Commission's information request, showing lower revenues, is more accurate than the Yankee Group's earlier estimate. Indeed, the Yankee Group study attributes private line revenues to AT&T for SBC's region that exceed AT&T's nationwide private line sales, and it attributes revenues to AT&T for MSAs where AT&T has no private line revenues. Letter from Gary L. Phillips, SBC, and Lawrence J. Lafaro, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65 at 1 (filed Oct. 7, 2005) (SBC/AT&T Oct. 7 *Ex Parte* Letter); SBC/AT&T July 15 *Ex Parte* Letter at 5. Second, even if the market shares reported for AT&T were accurate, the national market shares likely mask variations in market share among narrower geographic regions. The study states that other competing carriers' market shares vary among "Tier 1" to "Tier 4" metropolitan markets, for example. XO Sept. 21 *Ex Parte* Letter at 13.

<sup>140</sup> See, e.g., Cox Comments at 15; Qwest July 7 *Ex Parte* Letter, Attach. at 7.

<sup>141</sup> See *supra* para. 45 (discussing evidence of competitive fiber networks); para. 44 (discussing competitive collocation in the same wire centers as AT&T within the 19 MSAs where AT&T has local facilities). The Commission has previously concluded that "fiber-based collocation is a key indicator of competitive fiber deployment, and the D.C. Circuit has affirmed this use as reasonable. Fiber-based collocation in a wire center very clearly indicates the presence of competitive transport facilities in that wire center." *Triennial Review Remand Order*, 20 FCC Rcd at 2589-90, para. 96.

competing carriers besides AT&T in the 19 MSAs where AT&T provides special access in SBC's region. These maps demonstrate that other carriers besides AT&T have fiber networks in these geographic areas and are possible suppliers of short and intermediate haul traffic.<sup>142</sup> Thus, we do not find that AT&T is able to provide local transport on an MSA-wide basis more efficiently than other competing carriers.<sup>143</sup>

51. We find further comfort in certain voluntary commitments which the Applicants have made relating to unbundled network elements and special access services.<sup>144</sup> First, the Applicants commit not to seek any increase in state-approved rates for UNEs that are currently in effect, with the exception of rates that are subject to specified currently pending appeals. Second, the Applicants commit to exclude fiber-based collocation arrangements established by AT&T or its affiliates in identifying wire centers in which SBC claims there is no impairment pursuant to section 51.319(a) and (e) of the Commission's rules. Third, the Applicants commit that SBC's incumbent local operating companies will implement a performance metrics plan for interstate special access services, under which they will provide performance data on a quarterly basis. Fourth, the Applicants commit not to raise rates paid by existing customers of AT&T's DS1 and DS3 local private line services that AT&T provides in SBC's in-region territory pursuant, or referenced, to its TCG FCC Tariff No. 2. Fifth, the Applicants commit that SBC's

<sup>142</sup> SBC/AT&T Sept. 6 *Ex Parte* Letter, Attach. 3.

<sup>143</sup> Based on our findings regarding the ability of other carriers with fiber networks to offer competing special access services where AT&T offered such services pre-merger, we are not persuaded by commenters' assertions that the merger is likely to result in anticompetitive effects because the remaining competitive LECs are unlikely to re-create AT&T's facilities, or replicate its ability to expand, in the near future. *See, e.g.,* Cbeyond *et al.* July 14 *Ex Parte* Letter at 12-13 (asserting that other carriers do not have the same number of enterprise customers as AT&T, and thus do not have traffic volumes to justify the same level of competitive facilities deployment); *see also* Qwest July 7 *Ex Parte* Letter at 7, 13 (contending that AT&T (and MCI) were each expected to deploy more local facilities so as to reduce their dependence on the incumbent carrier's facilities based on their unique, comparatively larger networks). We also reject CTC Communications' assertion that we should, in this proceeding, revise the unbundling rules adopted in the *Triennial Review Remand Order*. Specifically, CTC contends that the Commission should revise its unbundling rules so that AT&T fiber-based collocations are counted as "affiliated" for purposes of high-capacity loops and dedicated transport unbundling. Letter from Edward W. Kirsch, Counsel for CTC Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 8 (filed Aug. 31, 2005) (CTC Aug. 31 *Ex Parte* Letter) *see also* Letter from Brad E. Mutschelknaus, Counsel for Bridgecom *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 3-4 (filed Oct. 18, 2005). This issue currently is pending before the Commission on reconsideration of the *Triennial Review Remand Order*, and we believe that is the appropriate forum to address our unbundling rules. *See, e.g.,* CTC Communications Corp. *et al.* Petition for Reconsideration, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, at 5-8 (filed Mar. 28, 2005). While we decline to revise our unbundling rules, as requested by commenters, we note that the Applicants have voluntarily committed to exclude fiber-based collocation arrangements established by AT&T or its affiliates in identifying wire centers in which SBC claims there is no impairment. *See* SBC Oct. 31 *Ex Parte* Letter, Attach. at 2; *see also* Appendix F.

Our finding above that the merger will not likely have anticompetitive effects with respect to wholesale transport services generally applies with even greater force in the context of entrance facilities. As the Commission has found in the past, entrance facilities "are less costly to build, are more widely available from alternative providers, and have greater revenue potential than dedicated transport between incumbent LEC central offices," and no significant concerns regarding entrance facilities were raised in the record. *Triennial Review Remand Order*, 20 FCC Rcd at 2612, para. 141.

<sup>144</sup> *See* SBC Oct. 31 *Ex Parte* Letter, Attach. at 2-3; *see also* Appendix F.

incumbent local telephone companies will not provide special access offerings to their wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions. Sixth, the Applicants commit that, before SBC/AT&T provides a new contract tariff to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon or its wireline affiliates. Finally, the Applicants commit that SBC/AT&T will not increase the rates in SBC's interstate tariffs, including contract tariffs, for special access services that SBC provides in its in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date.<sup>145</sup> These commitments and their duration are described in greater detail in Appendix F. Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.

52. *Coordinated Effects.* We also do not believe that the merger increases the likelihood of coordinated interaction. It is generally recognized that the likelihood of coordinated effects depends on a number of factors, including the ease with which firms can reach tacit agreement, the incentive of firms to cheat, and the ability of the remaining firms to detect and punish such cheating.<sup>146</sup> Carriers that purchase wholesale special access services, whether Type I or Type II, are sophisticated customers that often rely on a competitive bid process or negotiate individual contracts, and that enter into long-term contracts.<sup>147</sup> Further, by virtue of the fact that AT&T will be divesting assets pursuant to the DOJ Consent Decree, there need not be significant reduction in the number of competitive providers of Type I wholesale special access services to specific buildings. Moreover, as noted above, there will remain numerous competitors that are able to provide Type II wholesale special access services. We find that these factors make it unlikely that the merger will lead to tacit collusion or other coordinated effects in the relevant special access markets in SBC's region.<sup>148</sup>

53. *Mutual Forbearance.* Commenters assert that, if their respective mergers are consummated, SBC/AT&T and Verizon/MCI are likely to "mutually forbear" from competing against each other in the provision of wholesale special access services in the other's service territory.<sup>149</sup> They claim that the revenues SBC/AT&T could earn by offering competing special access services in Verizon's region would be dwarfed by the revenues that would be lost if Verizon/MCI responded by offering competitive special access services in SBC's territory. Commenters assert that both SBC/AT&T and Verizon/MCI would recognize that it is in their mutual interest not to compete.<sup>150</sup> As support, commenters assert that SBC and Verizon have failed to compete significantly with each other in geographic areas where they

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<sup>145</sup> This commitment does not apply to DS0 services or to advanced services as defined in paragraph 2 of the SBC/Ameritech merger conditions. *SBC/Ameritech Order*, 14 FCC Rcd at 14969, App. C, para. 2.

<sup>146</sup> JEAN TIROLE, *THE THEORY OF INDUSTRIAL ORGANIZATION* 239 (1988); GEORGE STIGLER, "A Theory of Oligopoly," in *THE ORGANIZATION OF INDUSTRY* 39 (1968); ALEXIS JACQUEMIN AND MARGARET E. SLADE, "Cartels, Collusion, and Horizontal Merger," in *THE HANDBOOK OF INDUSTRIAL ORGANIZATION* 415 (1989).

<sup>147</sup> See, e.g., Broadwing Pietro Decl. at paras. 12-16 (discussing the use of a bidding process for certain special access services); Cbeyond *et al.* Wilkie Decl. at para. 13 (discussing the use of a bidding process for special access); SBC/AT&T Casto Reply Decl. at para. 3 (discussing term discounts for special access).

<sup>148</sup> See DOJ/FTC Guidelines § 2.12.

<sup>149</sup> Cbeyond *et al.* Petition at 45-46; Qwest Petition at 30-33; Eschelon *et al.* June 6 *Ex Parte* Letter at 12; Cbeyond *et al.* July 14 *Ex Parte* Letter at 22-23.

<sup>150</sup> Cbeyond *et al.* Wilkie Decl. at para. 32, see also *id.* at paras. 28-39; Eschelon *et al.* May 10 *Ex Parte* Letter, Attach. at 29-30.

already have adjacent network facilities, such as Southern California, Dallas and Irving, Texas and along the Connecticut/New York border.<sup>151</sup>

54. While we recognize that mutual forbearance is possible in theory, we reject commenters' allegations that this merger is likely to result in anticompetitive effects in Verizon's region. As an initial matter, SBC is spending billions of dollars to buy AT&T's nationwide network and global enterprise and business reach, including facilities in Verizon's region. In light of this investment, it is reasonable to expect SBC to have strong incentives to utilize fully its assets in Verizon's territory.<sup>152</sup> More significantly, however, we find, as discussed above, that there are numerous competitors with local facilities that will remain post-merger, that can offer competing special access services to the buildings in SBC's region where AT&T offered special access services.<sup>153</sup> Nothing in the record suggests that the conditions would be significantly different in Verizon's territory. Thus, we conclude that, even if SBC/AT&T forbears from offering competing special access services in Verizon's region, competitive alternatives will remain for those locations where AT&T offered competing special access services.<sup>154</sup>

#### b. Vertical Effects

55. We disagree with commenters that the merger will increase the Applicants' incentive and/or ability to raise rivals' costs or engage in a price squeeze.<sup>155</sup> As an initial matter, where UNEs are available, they provide an alternative for special access service and might serve to constrain, at least to some extent, special access price increases and other raising rivals' costs strategies.<sup>156</sup> For areas where UNEs are not available, we note that competing carriers have invested heavily in the 19 MSAs where

<sup>151</sup> Eschelon *et al.* May 10 *Ex Parte* Letter, Attach. at 14-15, 30-35; Cbeyond *et al.* July 14 *Ex Parte* Letter at 22.

<sup>152</sup> SBC/AT&T Reply at 131-140; SBC/AT&T June 24 *Ex Parte* Letter at 11.

<sup>153</sup> Professor Wilkie submitted a declaration that contained calculations suggesting that SBC and Verizon will have an incentive to engage in mutual forbearance. *See* Letter from Thomas Cohen, Counsel for XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. (filed Oct. 18, 2005) (XO Wilkie Supp. Decl.). Professor Wilkie's declaration fails to address the role of competing providers of special access, however.

<sup>154</sup> We note in this regard that, in order to address potential competitive harm from the elimination of MCI as a competitive Type I service provider in Verizon's region, the DOJ required certain divestitures. *See generally* Final Judgment, *United States v. Verizon Communications Inc.*, Civil Action No. 1:05CV02103 (D.D.C. filed Oct. 27, 2005) (*DOJ-Verizon/MCI Final Judgment*).

<sup>155</sup> *See, e.g.,* ACN *et al.* Comments at 34-36 (claiming not only that the merged entity will have the ability to impose a price squeeze, but that the mere fact that the merger combines SBC's access facilities with AT&T's enterprise customers poses competitive problems because competitors will be forced to pay SBC's prices for special access, while SBC itself will face only the actual economic cost of providing special access services to itself); Broadwing and SAVVIS Petition at 6 (expressing the concern that "SBC will provide relatively slower and poorer provisioning and repair of circuits supplied to its competitors, which along with price, are critical benchmarks customers use to select suppliers"); *see also, e.g.,* Global Crossing Farrell Decl. at paras. 37-42; Broadwing and SAVVIS Petition at 29-35; Consumer Federation of America *et al.* Petition at 24; Telscape Comments at 5-6; Ad Hoc Telecom Users Reply at 13-16; BT Americas Reply at 16-20; CompTel/ALTS Reply at 4-5; Letter from Patrick Donovan, Counsel for ACN *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 5 (filed Aug. 10, 2005) (ACN *et al.* Aug. 10 *Ex Parte* Letter).

<sup>156</sup> *See Triennial Review Remand Order*, 20 FCC Rcd at 2625-33, paras. 167-181 (discussing the general criteria used to determine whether UNE DS1 and DS3 loops must be made available); *id.* at 2570-75, paras. 62-65 (discussing the potential for UNEs to act as a constraint, to some extent, on special access prices).

AT&T has local facilities.<sup>157</sup> As described above, we have analyzed the likely impacts of this merger with regard to the provision of special access services and have determined that this merger, as conditioned by the DOJ Consent Decree, is not likely to result in anticompetitive effects in the markets for special access services. As the Applicants point out, “SBC and other incumbent LECs . . . *already* are vertically integrated participants in both input and downstream markets.”<sup>158</sup> Second, as we have found previously, “[t]o the extent that certain incumbent LECs have the incentive and ability under our existing rules to discriminate against competitors” using special access inputs, “such a concern is more appropriately addressed in our existing rulemaking proceedings on special access performance metrics and special access pricing.”<sup>159</sup> In fact, a voluminous record on industry-wide special access pricing issues (along with specific pricing information) has only recently been submitted to the Commission in one of these proceedings.<sup>160</sup> By addressing these issues in the context of a rulemaking, we will be able to develop a comprehensive approach based on a full record that applies to all similarly-situated incumbent LECs.<sup>161</sup>

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<sup>157</sup> SBC Aug. 12 *Ex Parte* Letter, Attach. (fiber-based collocations); SBC/AT&T Sept. 6 *Ex Parte* Letter at 3; *id.*, Attach. (shares of CLEC lit buildings by MSA). In addition, competitive LECs have deployed substantial local fiber facilities in many MSAs. SBC Info. Req., Exh. 6(d)(2). While exact fiber route miles for the competitive LECs are not available for the 19 MSAs where AT&T has local fiber facilities, it appears that a number of competitive LECs have substantial national fiber facilities, some even greater than AT&T’s. SBC/AT&T July 15 *Ex Parte* Letter at 1-2.

<sup>158</sup> SBC/AT&T Reply at 51.

<sup>159</sup> *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183 (citing *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001) (inviting comment on whether the Commission should adopt metrics to prevent discrimination in the provision of special access services); *AT&T Corp., Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593 (filed Oct. 15, 2002)); *Special Access NPRM*, 20 FCC Rcd at 1994. Similar issues also are raised in the pending proceeding dealing with the sunset of BOC section 272 requirements. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Section 272 FNPRM*); see also 47 U.S.C. § 272(e)(1).

<sup>160</sup> *Special Access NPRM*, 20 FCC Rcd at 1994 (special access comments filed June 13, 2005 and reply comments filed July 29, 2005).

<sup>161</sup> *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183; see also *Alltel/Western Wireless Order*, FCC 05-138 at paras. 104, 109 (The broad scope of concerns raised that the merger “would create the opportunity for Alltel to engage in anticompetitive roaming practices . . . are more appropriately addressed in the context of a rulemaking proceeding. . . . [The rulemaking] proceeding will afford interested parties an opportunity to comment on a variety of roaming issues, including manual and automatic roaming, technical considerations, and small and rural carrier roaming concerns.”); *AT&T/Comcast Order*, 17 FCC Rcd at 23257, para. 31 (“The Commission’s pending rulemaking on cable horizontal ownership is the more appropriate forum for consideration of the potential effects of industry-wide clustering on the distribution of programming by MVPDs to consumers.”); cf. *EchoStar/DirectTV Order*, 17 FCC Rcd at 20584, para. 48 (“[W]e find that the specific recommendations made by Consumers Union with respect to public interest set-aside issues are properly addressed in the rulemaking setting rather than a subset thereof in the context of a merger application.”); *SBC/SNET Order*, 13 FCC Rcd at 21306, para. 29 (finding that the Commission need not address in the context of the merger proceeding the allegation that SBC was not providing support necessary for a calling party pays service because the “Commission has regularly declined to consider in merger proceedings matters that are subject to other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceedings of general applicability.”); *AT&T/TCI Order*, 14 FCC Rcd at 3183, para. 43 (“We find that digital broadcast signal carriage requirements should (continued....)”).

### C. Retail Enterprise Competition

56. In this section, we analyze the potential competitive effects of the proposed merger on enterprise services. As discussed below, we find that the Applicants compete against each other with respect to various types of enterprise services and various classes of enterprise customers, and that the merger will lead to increased concentration in certain relevant markets. We conclude, however, that the merger is not likely to result in anticompetitive effects for enterprise customers. We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there will remain a significant number of carriers competing in the market. With respect to small enterprise customers, we recognize that AT&T had announced its gradual withdrawal from that market prior to the announcement of the merger, and we conclude after examining the record that it was not exerting significant competitive pressure with respect to those customers.

#### 1. Relevant Markets

##### a. Relevant Product Markets

57. The record indicates that retail enterprise customers purchase a variety of different communications services, including local voice, long distance and international voice, and data services.<sup>162</sup> In addition, enterprise customers frequently purchase high-capacity transmission services,<sup>163</sup>

(Continued from previous page)

be addressed in the Commission's pending rulemaking proceeding and not here. . . . [T]his is like other cases where the Commission has declined to consider, in merger proceedings, matters that are the subject of rulemaking proceedings before the Commission because the public interest would be better served by addressing the matter in a broader proceeding of general applicability." For these same reasons, we reject the claims of commenters seeking special access conditions or raising concerns unrelated to the merger, many of which are the subject of pending rulemaking proceedings. See, e.g., ACN *et al.* Comments at 70-72; CompTel/ALTS Petition at 30-32; NASUCA Comments at 28; Texas OPC Comments at 9; Global Crossing Comments at 16-17, 20-21; Ad Hoc Telecom Users Reply at 29; BT Americas Reply at 9-17; ACN *et al.* Aug. 10 *Ex Parte* Letter, Attach. at 5; Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65, Attach. at 4-8 (filed Sept. 22, 2005) (Qwest Sept. 22 *Ex Parte* Letter).

<sup>162</sup> SBC lists [REDACTED] different enterprise services: [REDACTED]. SBC Info. Req., SBC21749-818 at 21752.

Note that documents submitted by SBC in response to the Commission's information request include numerical labeling in the following format: SBCFCC##### (where # represents a digit). For convenience in citing these documents, we do not include "FCC" or any leading 0s. Thus, a document beginning on page SBCFCC000012345 and ending on page SBCFCC000012349 would be cited as "SBC12345-49."

<sup>163</sup> The specific technology used by the individual enterprise customer depends on availability, needed capacity, services required, and desired service quality levels. Enterprise services could include some number of DS0 circuits or high-capacity circuits of DS1 or higher bandwidth, such as DS1, DS3, and OCn circuits. See, e.g., *Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298 (discussing services typically purchased by enterprise customers). A DS0 is a two-wire basic connection, which operates at 64,000 bps, the worldwide standard speed for digitizing voice conversation using pulse code modulation. HARRY NEWTON, NEWTON'S TELECOM DICTIONARY, 273 (20th ed., 2004) (defining "DS-0") (NEWTON'S TELECOM DICTIONARY). A DS1 is a four-wire connection equivalent to 24 DS0s. A DS3 is equivalent to 28 DS1s. These loops may be purchased by customers from state and federal tariffs. *Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298.

such as Frame Relay,<sup>164</sup> Asynchronous Transfer Mode (ATM),<sup>165</sup> Gigabit Ethernet,<sup>166</sup> and similar services provided via emerging technologies.<sup>167</sup> Retail enterprise customers also purchase other facilities and CPE.<sup>168</sup>

58. The record makes clear that the services offered to enterprise customers fall into a number of separate relevant product markets. For example, it makes little sense that an enterprise customer would shift to making only long distance calls in response to a small, but significant and nontransitory increase in the price of local telephone service. Similarly, an enterprise customer would not shift to relying totally on voice services (whether local, long distance, or international) if the price of data services rose by a small, but significant and nontransitory amount. Consequently, we find that local voice, long distance voice, and data services constitute distinct product markets.

59. We have less information about the substitutability of different transmission services. While there is data in the record indicating that the number of customers taking Frame Relay is declining, while the number taking IP transmission services is increasing,<sup>169</sup> we do not have data on elasticities (and cross elasticities) of demand for any particular transmission services. Similarly, there is insufficient information about the migration time, price differences, and service quality differences that customers

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<sup>164</sup> Frame Relay is a high speed data service that allows local area networks to be connected across a public network. Frame Relay remains a cost effective service option for smaller businesses that do not generate enough traffic to support a full T-1. See TELECOMMUNICATIONS INDUSTRY ASSOCIATION, 2005 TELECOMMUNICATIONS MARKET REVIEW AND FORECAST 121 (2005) (TIA 2005 MARKET REVIEW). A T-1 provides the same speed and capacity service as a DS1. *Triennial Review Order*, 18 FCC Rcd at 17104-05, para. 202 n.634. Similarly, a T-3 provides the same speed and capacity service as a DS3.

<sup>165</sup> ATM service, which was developed more recently than Frame Relay, has greater availability in urban areas, is currently the most widely-used carrier backbone technology, and can guarantee different quality of service levels to meet various customer needs. ATM offers higher reliability and greater capacity because it combines the advantages of circuit-switched and packet-switched networks, guaranteeing the delivery of information that is intolerant of delays, while allocating bandwidth more efficiently. TIA 2005 MARKET REVIEW at 123-125.

<sup>166</sup> Gigabit Ethernet is a local area network (LAN) connection technique that provides high-speed access to file servers and applications. It facilitates applications that use graphics, large database design, modeling (e.g., engineering/medical imaging applications), and streaming video. TIA 2005 MARKET REVIEW at 99.

<sup>167</sup> Enterprises are increasing their use of IP Virtual Private Networks (IP-VPNs), and carriers are migrating to Multiprotocol Label Switching (MPLS). TIA 2005 MARKET REVIEW at 118-25. MPLS is similar to other circuit-switched ATM or Frame Relay networks, except that MPLS is not dependent on a particular technology. See, e.g., MPLS Resource Center, *The MPLS FAQ*, (visited Aug. 19, 2005) available at <http://www.mplsrc.com/faq1.shtml#MPLS%20History>.

<sup>168</sup> See SBC/AT&T Reply, *Reply Declaration of Walid Bazzi* (SBC/AT&T Bazzi Reply Decl.) at paras. 8, 32. SBC explains that enterprise customers need CPE and other network infrastructure to support "enterprise-wide management applications (e.g. linking a network of retail stores to exchange inventory and sales information)." *Id.*

<sup>169</sup> See, e.g., AT&T Info. Req., ATTFCC02991-3048 at 2996. From 1997 through 2002, the use of Frame Relay grew at a faster rate than the use of dedicated leased lines; however, in the past two years, growth in Frame Relay ports has stagnated. TIA 2005 Market Review at 120-121. From the year 2000 through the year 2004, ATM service revenues nearly tripled, from \$1.1 billion to \$2.9 billion. *Id.* at 124. The number of ATM ports in the United States rose by 10.5% in 2004 to 42,000, and it is expected to climb to 51,000 by 2008. *Id.* However, as newer technologies emerge, ATM's role as a backbone technology is changing as enterprise customers increase their use of IP-VPNs. *Id.* at 123.

face when deciding to change from one transmission service to another. Thus, the evidence is insufficient for us to define precisely the boundaries of those transmission service markets.

60. In previous orders, the Commission also has found it appropriate to define separate relevant product markets based on the class of customer (particularly where there is “price discrimination”).<sup>170</sup> For example, the Commission previously found that small enterprise customers fall into a separate relevant product market from mid-sized to large retail enterprise customers.<sup>171</sup> This distinction exists because, unlike small enterprise customers, larger businesses often contract for more sophisticated services, including Frame Relay, virtual private networks, and enhanced 800 services.<sup>172</sup> Larger businesses also demand a greater volume of minutes, for which they often negotiate discounts.<sup>173</sup> Not only do smaller enterprise customers tend to purchase different services than larger business customers,<sup>174</sup> but carriers treat them differently, both in the way they market their products and in the prices they charge.<sup>175</sup>

61. While the record demonstrates that service providers charge different prices to different customers for particular services, it fails to reveal any standard rules or general principles that dictate how service providers set prices for particular customers. For example, while record evidence indicates that SBC and AT&T have created classes of enterprise customers for pricing, marketing, and other purposes, it appears that the two carriers use different break-points between the customer classes.<sup>176</sup>

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<sup>170</sup> See *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14088-89, para. 102 (finding that it is appropriate to define the product market by aggregating customers with similar demand patterns); see also *WorldCom/MCI Order*, 13 FCC Rcd at 18040-42, paras. 24-29; *SBC/Ameritech Order*, 14 FCC Rcd at 14760, para. 100; *SBC/SNET Order*, 13 FCC Rcd at 21301, para. 20; *DOJ/FTC Guidelines* § 1.12. Economists define “price discrimination” as “charging different customers prices that are not in proportion to marginal cost.” W. KIP VISCUSI *et al.*, *ECONOMICS OF REGULATION AND ANTITRUST* 284-85 (3d ed. 2000). Economists have distinguished various types of price discrimination. Under second degree price discrimination, all purchasers confront the same price schedule, but pay different prices depending on their demands. *Id.* Volume and term discounts are examples of second degree price discrimination.

<sup>171</sup> See *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14088-89, para. 102. A study produced for the United States Small Business Administration states that “large businesses may be more likely than small ones to use alternatives like Public Branch-Exchange (PBX) systems, local area networks (LANs) and dedicated high-speed data services, like T-1 and T-3 lines.” Stephen B. Pociask, *A Survey of Small Businesses’ Telecommunications Use and Spending* at 2 (Mar. 2004) available at <http://www.sba.gov/advo/research/rs236tot.pdf> (*SBA Telecom Report*).

<sup>172</sup> *WorldCom/MCI Order*, 13 FCC Rcd at 18040-41, para. 26.

<sup>173</sup> *Id.*

<sup>174</sup> According to one study, for data services, 38% of small business users subscribe to Internet dial-up services, 26% use cable modem, 21% use DSL, and only 4% of small businesses subscribe to T-1 services. *SBA Telecom Report* at 44.

<sup>175</sup> AT&T Info. Req., ATT509000105-47 at 107 ([REDACTED]); see also *infra* note 176 (discussing how both AT&T and SBC adopt different marketing approaches for different classes of customers).

<sup>176</sup> Indeed, both SBC and AT&T use the term “enterprise” differently in the ordinary course of business. SBC explains that it breaks down its business customers into two categories: Global and Enterprise Markets, and Business Communications Services (BCS). Within the Global and Enterprise Markets category, there are the following sub-categories: Global; Enterprise; Entertainment/Hospitality; Service Providers; and Federal. “Global” includes customers that are expected to spend at least \$1 million per year on communications services, and that generally have locations in multiple regions of SBC’s franchised territory. “Enterprise” includes customers that are (continued....)



There is evidence in the record, however, suggesting that a number of factors influence how carriers price their services to particular types of customers.<sup>177</sup> These factors include the customer's total telecom spend; the types of services and technologies ordered; the customer's total employee count; the customer's total annual revenues; and whether the customer obtains customized services.<sup>178</sup> Further, it appears that carriers place varying degrees of importance on each of these factors, and consequently, carriers' pricing to particular enterprise customers may vary. Thus, although we find that there are separate product markets for the different enterprise customer groups, there does not appear to be industry-wide consensus as to how to differentiate one class from another.<sup>179</sup>

#### b. Relevant Geographic Markets

62. In prior merger orders, the Commission has recognized that, because a customer is unlikely to physically move its location in response to a small, but significant and nontransitory increase in the price of a communications service, each customer location constitutes a separate relevant geographic market.<sup>180</sup> For reasons of administrative practicality, however, the Commission has aggregated customers facing similar competitive choices to create larger relevant geographic markets.<sup>181</sup> We believe this traditional approach is appropriate for enterprise customers with single locations in SBC's region. Unfortunately, the data in the record is not sufficiently detailed to define localized relevant geographic markets in which all enterprise customers face the same competitive choices. Rather, the most disaggregated market share (Continued from previous page)

expected to spend over \$48,000, but less than \$1 million on communications services on an annual basis. "Entertainment/Hospitality" includes customers that are simply customers that are in these types of business. Similarly, "Service Providers" includes simply those customers that provide wireline and wireless services. "Federal" includes all federal government agencies. Within the BCS category, there are the following submarkets: GEM; Signature; and Valued. "GEM" includes state and local governments, educational institutions, and medical institutions. "Signature" customers are expected to spend between \$7,000 and \$48,000 on communications services per year. "Valued" customers are expected to spend less than \$7,000. SBC Info. Request at 3-7.

AT&T breaks down its business customers into the following categories: Signature; Enterprise; Select; Global; Government; and Wholesale. "Signature" comprise a defined list of approximately 300 customers that are typically AT&T's largest. "Enterprise" customers order more than \$1 million annually and include qualifying local governments and all state government customers except Hawaii and Alaska. "Select" customers generally order more than \$6,000 annually, have 85 employees on average, and order at least some degree of managed or data services. The "Gold" class of Select have an annual spend of at least \$18,000 (or total sales in excess of \$10 million with potential purchases of AT&T services of \$60,000), data and related service requirements in multiple locations, and significant IT requirements. The "Silver" class of Select are those Select customers that fail to meet the Gold criteria. "Global" customers include multinational accounts headquartered in non-U.S. locations with annual spend of \$100,000 for international services (or potential purchases of services provided by AT&T in excess of \$500,000) and operations in more than one AT&T international region. It also includes Japanese domestic customers with potential purchases of \$100,000. "Government" consists of federal government departments and agencies, including both defense/security and non-defense. "Wholesale" consists of common carriers and systems integrators. AT&T Info. Request at 3-4.

<sup>177</sup> See AT&T Info. Req., ATT509000105-47 at 107 ([REDACTED]).

<sup>178</sup> See *supra* note 176.

<sup>179</sup> Cf. *WorldCom/MCI Order*, 13 FCC Rcd at 18041, para. 27 (finding that it is unnecessary to define narrow product markets where there is insufficient data in the record on cross elasticities of demand).

<sup>180</sup> See, e.g., *EchoStar/DirectTV Order*, 17 FCC Rcd at 20610, para. 119.

<sup>181</sup> *Id.*; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20016-17, para. 54.

data that is available is presented at the state level. Accordingly, we will use the most disaggregated data possible in performing our structural analysis for different types of business services and for certain broad classes of business customers, where such data is available. In most cases, the data will be presented at the state level.<sup>182</sup>

63. For larger, multi-location enterprise customers, we reach a slightly different conclusion. We find that these customers typically seek service from a provider that can serve all their locations, and generally only a few carriers serving a particular location have such capabilities. In light of the fact that there are relatively few providers that can offer a high level of ubiquitous service, we conclude that this geographic market should encompass all the geographic locations where these multi-location business customers may have a presence. Thus, we consider it appropriate to consider SBC's various states and regions as the relevant geographic market for regional, multi-location customers, while for business customers with locations throughout the United States, we will perform a structural analysis based upon available data at the national level that focuses on carriers that have the capability of serving customers throughout the country.

### c. Market Participants

64. We find, based on the record, that there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors.<sup>183</sup>

## 2. Competitive Analysis

### a. Horizontal Effects

65. *Unilateral Effects.* The lack of precise demand data notwithstanding, there is documentary evidence in the record that allows us to examine the Applicants' assertions regarding the degree to which they compete for enterprise customers.<sup>184</sup> Moreover, there are some data that permit us to identify (with some level of disaggregation) market participants, as well as to calculate current market shares, and to estimate changes in market share that are likely to result from the merger. Specifically, the Applicants have provided internal documents about their business operations, as well as limited, internal studies that provide market share data about the carriers serving certain markets. In this section, we use this documentary evidence and data to discuss the horizontal concerns raised in the record. We conclude that, although there is evidence that horizontal concentration will increase as a result of the merger, this increase is not likely to result in anticompetitive effects, given the large number of competitors already

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<sup>182</sup> Cf. *In the Matter Of 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13724, para. 273 (2003) (finding that the use of a broader geographic area still serves as a rational basis when defining relevant geographic markets), *aff'd in part, remanded in part on other grounds, Prometheus Radio Project v. FCC*, 373 F.3d 372 (D.C. Cir. 2003). We also note that this approach is consistent with SBC's competitive reports and assessments, which are generally conducted on a state wide basis. See, e.g., SBC Info. Req., SBC156307-10.

<sup>183</sup> See SBC/AT&T Application at 72.

<sup>184</sup> ACN *et al.* claim that the application provides neither data about how many small or mid-sized business customers AT&T actually serves in SBC's region, nor data about how many national customers SBC serves. See ACN *et al.* Comments at 9. As discussed below, however, SBC has provided some data regarding these markets.

participating in this market and the high level of customer sophistication for mid-sized and large enterprise customers. For small enterprise customers, we similarly conclude that the merger is not likely to result in anticompetitive effects, based upon AT&T's official departure from this segment of the market, as well as likely increased competition from cable and VoIP providers.

66. Commenters claim that the merger will have adverse competitive effects because SBC and AT&T already compete to a significant degree for the same customers, and thus the merger will cause an increase in the merged entity's market share and in market concentration.<sup>185</sup> Commenters further assert that, if the Commission finds that little current competition exists between the two companies, the merger nonetheless eliminates SBC as a potential competitor in the large enterprise market.<sup>186</sup> Moreover, commenters assert that, after the merger, SBC and AT&T together will have about a 75 percent market share for medium and large enterprise customers.<sup>187</sup> CompTel/ALTS argue that the merger will increase concentration in this market by 800 points from a pre-merger HHI of 2500 to a post-merger HHI of more than 3300.<sup>188</sup>

67. The Applicants contend that they generally compete at opposite ends of the retail enterprise market.<sup>189</sup> SBC argues that it provides its local network services to primarily small and medium sized enterprise customers,<sup>190</sup> whereas AT&T operates a global network that serves mainly large businesses.<sup>191</sup> SBC states that it is "acquiring AT&T in order to become a major provider of communications services to national and global enterprise customers with sophisticated needs."<sup>192</sup> According to the Applicants,

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<sup>185</sup> ACN *et al.* Comments at 3, 8-9; CompTel/ALTS Petition at 24-26; Qwest Petition at 15; Consumer Federation *et al.* Petition at 22; Cbeyond *et al.* Petition at 1-2. Specifically, commenters generally assert that, because AT&T is SBC's biggest competitor, there will be too much market concentration in the hands of the merged entity.

<sup>186</sup> ACN *et al.* argue that, even if SBC serves only a few large enterprise customers today, a merger with AT&T is not its only possible means of entry into this market. They assert that SBC has not shown an inability to compete, but rather, only that it has never attempted to do so. ACN *et al.* Comments at 9-10.

<sup>187</sup> Consumer Federation *et al.* Petition at 22. According to these groups, "the HHI in the large business segment is just under 4900. A dominant firm with a market share of 70% would cause the HHI to be at least 4900. The merger would raise the HHI in the California large business market to over 5800." *Id.*; see also ACN *et al.* Comments at 27 n.71.

<sup>188</sup> CompTel/ALTS Petition at 25; see also ACN *et al.* Comments at 27.

<sup>189</sup> See SBC/AT&T Application at 96-97 (explaining that AT&T focus on the largest enterprise customers with the most sophisticated needs, and that SBC focuses on customers with a predominance of locations within the SBC 13-state region (plus the 30 out-of region markets) and that generally require less complex voice and data solutions.).

<sup>190</sup> SBC/AT&T Application at iii, 6, 96-97; SBC/AT&T Reply at v, 107. SBC explains that its strength among small and medium-sized businesses is largely due to these companies having only local or regional operations and the fact that they require less sophisticated products and services. SBC/AT&T Application, Declaration of James S. Kahan (SBC/AT&T Kahan Decl.) at para. 26.

<sup>191</sup> AT&T asserts that its ABS division provides a broad array of voice, data, and IP-based services to customers in more than 50 countries, allowing AT&T to compete for the business of the largest global enterprises. SBC/AT&T Application at iv, 98; SBC/AT&T Reply at 123-25. Given its ability to compete for large businesses, AT&T contends that it focuses primarily on serving "national and global enterprise customers with sophisticated needs." SBC/AT&T Application at 6, 96, 98.

<sup>192</sup> SBC/AT&T Reply at 134. SBC explains that it has been unsuccessful in attracting larger enterprise customers despite its investment of over \$1 billion in an interconnecting backbone network, which expands SBC's presence to (continued....)

their respective enterprise businesses are largely complementary, and thus, the merger will have little competitive impact upon the enterprise market.<sup>193</sup> They assert, therefore, that the merger will not significantly increase their respective shares of these markets. SBC acknowledges that there are instances in its region where SBC and AT&T were both finalists for a customer's bid, but it maintains that in those cases there are a large number of other firms competing for these same customers.<sup>194</sup>

68. Based upon review of internally produced documents, we find that the two companies in fact compete for a range of customers in the enterprise market.<sup>195</sup> Specifically, contrary to the Applicants' description of their respective enterprise operations, we find that SBC competes to a certain extent with AT&T for large enterprise customers and that conversely, AT&T competes with SBC for small and mid-sized enterprise customers. With respect to the level of competition between the Applicants in the large enterprise market, we agree with ACN *et al.* that it would be extraordinary for SBC already to have a large share of this market given that it only had region-wide, section 271 authority for 15 months at the time of the merger's announcement; and indeed, SBC's revenues in this market are smaller than AT&T's.<sup>196</sup> Documents clearly show, however, that SBC has achieved some degree of success with its

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30 out-of-region cities. SBC/AT&T Reply at 138; SBC/AT&T Kahan Decl. at para. 24. In addition to the backbone network, SBC states that it has entered into agreements to use third-party networks for transport and local access in areas where it lacks its own network facilities. SBC/AT&T Kahan Decl. at para. 25. SBC attributes its difficulties in attracting larger, out-of-region business customers to the fact that its network lacks "feature-rich, cost-effective, flexible, reliable, and secure communications services." *Id.* at para. 26. According to SBC, large business customers hesitate to use SBC because it does not directly control the management of many of the networks that it uses to provide service. *Id.* Similarly, SBC explains that it frequently cannot meet the high service levels that large companies often require of their providers. *Id.* SBC concludes that it lacks the "necessary array of enterprise services, and out of region lacks the dense ubiquitous network needed to support a broad array of services" required by larger businesses. SBC/AT&T Application, Declaration of Christopher Rice (SBC/AT&T Rice Decl.) at para. 32.

<sup>193</sup> SBC/AT&T Reply at 125. While SBC acknowledges that its "Global and Enterprise" sales have grown marginally, it argues that they are a "small fraction of AT&T's and other significant national competitors' sales." SBC/AT&T Application at 100-01. In support of this statement, the Applicants cite a Deloitte Consulting report, which provides that in the "twenty-one procurements for which Deloitte has data, SBC and AT&T bid against each other only three times and were both finalists in only one procurement." SBC/AT&T Reply at 124; *see also* SBC/AT&T Bazzi Reply Decl. at paras. 19-24.

<sup>194</sup> SBC/AT&T Reply at 124.

<sup>195</sup> Given this finding, we find inapposite the assertions of some commenters that SBC is a potential competitor to AT&T for large enterprise customers. *See, e.g.,* ACN *et al.* Comments at 9. We discuss below commenters' contention that SBC was a potential competitor for global telecommunications service (GTS) customers. *See infra* Part V.G.3.c (U.S. International Services Competition – Global Telecommunications Services).

<sup>196</sup> ACN *et al.* Comments at 9, 28; *cf.* BT Americas Reply at 5-7 (claiming that SBC is a potential competitor for GTS customers). SBC reports that for 2004, its revenues for the largest enterprise customers (\$1 million or more in annual spend for communications services) amounted to [REDACTED] or [REDACTED]% of its total annual revenue. SBC Info. Req. at 9 (unredacted). For the same class of customers, AT&T reports that it generated [REDACTED], or [REDACTED]% of its total annual revenue. Letter from David L. Lawson, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65, Specification 1(c) Attach. (filed June 13, 2005) in Letter from Nirali Patel, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65 (filed July 21, 2005) (AT&T June 13 *Ex Parte* Letter). For enterprise customers spending less than \$1 million annually, SBC reports that in 2004, it generated [REDACTED] or [REDACTED]% of its total annual revenue from these customers. Letter from Thomas F. Hughes, Vice President-Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65 at 2 (filed June 24, 2005) (SBC June 24 *Ex Parte* Letter). AT&T reports (continued....)

entry into the large enterprise market, especially in its own region.<sup>197</sup> Documents in the record further show that AT&T has a presence in the small and mid-sized enterprise market, and that it competes for a wide range of customers.<sup>198</sup>

69. Using data submitted by the Applicants, staff calculated Herfindahl-Hirschman Indices (HHIs)<sup>199</sup> at the state level for local voice, long distance voice, and data enterprise services. In keeping with our conclusions about the relevant geographic markets, this analysis is conducted by examining the competitive alternatives of enterprise customers with single or multiple operations within the SBC franchise area, and also conducting a separate examination of the competitive choices for enterprise customers having multiple operations throughout the country.

70. In general, the market share calculations indicate a high level of concentration in most franchise areas for all relevant services for both *mid-sized* and *large* enterprise customers with significant operations in SBC's region after the merger.<sup>200</sup> SBC's median statewide share of local voice services<sup>201</sup>

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that for the same class of enterprise customers, it generated [REDACTED] or [REDACTED]% of its total revenue. AT&T June 13 *Ex Parte* Letter, Specification 1(c) Attach. In sum, SBC's business enterprise operations generated [REDACTED], whereas AT&T's generated [REDACTED].

<sup>197</sup> SBC Info. Req., SBC255592-621 at 255598 [REDACTED]). An AT&T study found that [REDACTED].” AT&T Info. Req., ATT532007204-305 at 220. One SBC report explains that SBC enterprise operations captured [REDACTED].” SBC Info. Req., SBC257440-545 at 257458. During the second quarter of 2004, SBC stated that it had responded to 57% more bid requests compared to the previous year. In addition, contracts won in this space have increased 34% from the fourth quarter of 2003. SBC, *Investor Briefing*, No. 243 at 6 (July 22, 2004) available at [http://www.sbc.com/Investor/Financial/Earning\\_Info/docs/2Q\\_04\\_IB-FINAL.pdf](http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_04_IB-FINAL.pdf). An AT&T study also found that SBC [REDACTED]. AT&T Info. Req., ATT532007204-305 at 232.

<sup>198</sup> An SBC report finds that in April 2004, [REDACTED]% of SBC's business access line competitive losses were in the [REDACTED] line space, and most of these lines fell in the [REDACTED] line space. SBC Info. Req., SBC259046-63 at 259047. Thus, almost [REDACTED] of its enterprise losses were from small businesses, and the report found that [REDACTED]% of customers left SBC for AT&T. SBC Info. Req., SBC21465-525 at 21479. Another SBC document explains that this exodus occurred because [REDACTED]. SBC Info. Req., SBC259046-63 at 259047. It states that [REDACTED]. *Id.* In response, SBC developed an initiative beginning in [REDACTED].” *Id.* at 48.

<sup>199</sup> The HHI is calculated as the sum of the squares of the market shares of each firm participating in a relevant market. The HHI can range from nearly zero in the case of an atomistic market to 10,000 in the case of a pure monopoly. Because the HHI is based on the squares of the market shares of the participants, it gives proportionately greater weight to carriers with larger market shares. Changes in market concentration are measured by the change in the HHI. See DOJ/FTC *Guidelines* § 1.5.

<sup>200</sup> Our analysis of SBC's position in the mid-size and large enterprise service market both before and after the acquisition is based upon data reported in an SBC internal report that was submitted in response to our data request. See SBC Info. Req., Exhs. 3(d)(2), 3(d)(3). Subsequently, SBC provided the underlying data which served as the basis for this internal report. See Letter from Robert M. Halperin, Counsel for SBC, to Marlene H. Dortch, Secretary, FCC, Exhs. 2004 Data Survey, 2004 Voice Survey (filed Aug. 31, 2005) (SBC Aug. 31 *Ex Parte* Letter). Specifically, SBC provided 2004 state and regional market share data for primary provider voice and data services; basic business lines; local voice services; intraLATA voice services; interLATA voice services; DSL and cable modem broadband services; retail T-1; and retail Hi-Cap services. SBC explains that for voice service surveys, it polled via telephone up to 4,000 customers that spent more than \$500 per month on these services. It explains that the results are weighted to represent the overall population of both medium and large business customers. For data services, SBC explains that it surveyed via written questionnaire 4,283 businesses that qualified. See SBC Aug. 31 *Ex Parte* Letter at 2-3. Market share calculations pre- and post-merger are provided in Confidential Appendix C, (continued....)

increases from [REDACTED] percent to [REDACTED] percent within the states in its region.<sup>202</sup> The median pre-merger HHI for these services<sup>203</sup> in SBC's entire region is [REDACTED], and it increases to [REDACTED] post-merger.<sup>204</sup> SBC's median statewide share of interLATA voice services<sup>205</sup> increases from [REDACTED] percent before the merger to [REDACTED] percent after the merger for states within its region. The median pre-merger HHI for these services in SBC's region is [REDACTED], and it increases to [REDACTED] after the merger.<sup>206</sup> For high-cap data services,<sup>207</sup> SBC's median statewide market share increases from [REDACTED] percent to [REDACTED] percent for its in-region states. The median pre-merger HHI for these services in SBC's entire region is [REDACTED], and it increases to [REDACTED] post-merger.<sup>208</sup>

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Tables 1-4. See SBC Aug. 31 *Ex Parte* Letter, Exhs. (providing enterprise data for voice and data services used to calculate market shares).

<sup>201</sup> The SBC survey does not provide a definition for these services, but it is generally accepted that local voice services encompass calls placed to a location within the local service area. See NEWTON'S TELECOM DICTIONARY at 488 (defining "local call").

<sup>202</sup> The market share data summarized in the text are based on revenues. The market share data for all the relevant geographic areas are presented in Confidential Appendix C. The percentages shown reflect the share of customer expenditures captured by the named provider. In addition, it should be observed that the sample data provided was not statistically sufficient for the state of Nevada, and thus, the data results are provided only for SBC's other 12 states. Appendix C also presents market share data based on customer accounts for basic business lines.

<sup>203</sup> In the text, we present the median pre-merger HHI and median post-merger HHI over the entire SBC in-region territory for each product where data, which were presented at the state level, are available. The pre-merger and post-merger HHIs for each state in this region, as well as the accompanying changes in HHI, are presented in Appendix C, Tables 1, 2, and 3.

<sup>204</sup> The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED]. BT Americas also cites HHIs calculated for large enterprise customers filed in the California commission's merger proceeding. BT Americas Reply at 7. However, as BT Americas itself notes, the underlying data is not available in this record, nor is it even clear what product market was used to calculate these market shares. *Id.* at 7 n.15. We thus do not rely on those HHIs in our analysis.

<sup>205</sup> The SBC survey does not provide a definition for these services, but it is generally accepted that interLATA voice services are carried by long distance companies, and include calls that are placed within one LATA and received in a different LATA. See NEWTON'S TELECOM DICTIONARY at 430 (defining "InterLATA call").

<sup>206</sup> The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED]. It should be noted that we exclude Indiana, which actually had the highest HHI, with [REDACTED], because of an anomaly caused by the fact that Sprint is a major incumbent LEC in Indiana and the survey combined Sprint's incumbent LEC operations and its interexchange operations.

<sup>207</sup> SBC explains that this category represents "the combined shares of Fractional T-1, T-1, Fractional T-3, and DS-3/T-3 services . . . . Both T-1 and High-Cap shares are for retail data services only, and therefore do not include circuits used for voice or wholesale special access services." See SBC Aug. 31 *Ex Parte* Letter at 5 n.12. We note that medium and large enterprise customers can use these high-speed transmission services for voice or data transmission, or to connect to an Internet service provider or Internet backbone provider for purposes of obtaining Internet access. While we perform a competitive analysis for high-speed transmission services above, we have no market share data to separately analyze high-speed services used specifically for Internet access.

<sup>208</sup> The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

71. Market share data pertaining to *small* enterprise customers within SBC's franchise area also indicate a high level of concentration for certain services in particular markets.<sup>209</sup> Specifically, we consider data pertaining to local, long distance, and to Internet access services for small enterprise customers.<sup>210</sup> SBC's median share of local access services<sup>211</sup> increases from [REDACTED] percent to [REDACTED] percent for states within its region. The pre-merger median HHI across SBC's states for these services is [REDACTED], and increases to [REDACTED] post-merger.<sup>212</sup> SBC's median share of long distance voice services increases from [REDACTED] percent to [REDACTED] percent for states within its region. The pre-merger median HHI for these services across SBC's states is [REDACTED] and increases to [REDACTED] post-merger.<sup>213</sup> For Internet access services, SBC's median share within its region increases slightly from [REDACTED] percent pre-merger to [REDACTED] percent post-merger for the states within its region. The pre-merger median HHI for these services across SBC's states is [REDACTED] and increases to [REDACTED] post-merger.<sup>214</sup>

72. The data indicate that the merger will result in a smaller increase in market concentration for enterprise customers having multiple operations located both inside and outside of SBC's region.<sup>215</sup> For example, for long distance voice services provided to these multi-location customers,<sup>216</sup> SBC's national

<sup>209</sup> Our analysis of SBC's position in the small enterprise market both before and after the acquisition is based upon data reported in an SBC internal report on small business market shares. SBC Info. Req., Exh. 3(d)(1). The carrier market share data detailed in this report are also presented at the state level and based upon revenue. HHI calculations pre- and post-merger are provided in Confidential Appendix C, Tables 5-7. We note that although this study does not specifically define small business customers, SBC, in response to the Commission's information request, explained that it considers a business that generates less than \$7,000 in annual communications services to be a small enterprise customer.

<sup>210</sup> Given the difficulty in obtaining accurate data about the various customer groups, it is likely that there is an overlap of data between consumer groups. For example, as noted above, SBC explains that it considers a business that generates less than \$7,000 in annual communications services to be a small enterprise customer. SBC Info. Req. at 7. In light of this consideration, however, SBC's data about small enterprise customers are likely to contain data from small business customers, which are discussed in our section on mass market customers.

<sup>211</sup> In the text, we present the median pre-merger HHI and median post-merger HHI over the entire SBC in-region territory for each product where data, which were presented at the state level, are available. The pre-merger and post-merger HHIs for each state in this region, as well as the accompanying changes in HHI, are presented in Appendix C, Tables 5, 6, and 7.

<sup>212</sup> The minimum post-merger HHI for local access services is [REDACTED], and the maximum HHI is [REDACTED].

<sup>213</sup> The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

<sup>214</sup> The minimum post-merger HHI for these services is [REDACTED], and the maximum is [REDACTED].

<sup>215</sup> Our analysis of SBC's market position for mid-sized and large enterprise customers with operations both in and out of its region is based upon data reported in AT&T internal reports on the retail data services market (4Q 2004) and the business long distance voice market (4Q 2004). See AT&T Info. Request, ATT516000531-49; ATT517000001-57. The carrier market share data detailed in this report are presented at the national level, and shares are based upon revenue. HHI calculations pre- and post-merger are provided in Confidential Appendix C, Tables 8-9.

<sup>216</sup> The study does not precisely define what it means by "long distance service." See *supra* note 205. We note that we have examined the revenue shares in AT&T's [REDACTED] segment because we find that customers in this class are most likely to have multiple locations nationally. See AT&T Info. Req., ATT517000001-57 at 23.

share increases from [REDACTED] percent to [REDACTED] percent based on fourth-quarter 2004 data. However, the pre-merger HHI for these services is [REDACTED] and rises to only [REDACTED] post-merger. Similarly, although SBC's national share of long distance data services<sup>217</sup> increases from an average of [REDACTED] percent to [REDACTED] percent based on fourth-quarter 2004 data, the HHI for these services increases from [REDACTED] pre-merger to [REDACTED] post-merger.

73. For enterprise customers with locations predominantly in SBC's region, we find that myriad providers are prepared to make competitive offers.<sup>218</sup> We further find that available market share data does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage.<sup>219</sup> Foreign-based companies, competitive LECs, cable companies, systems integrators, and equipment vendors and value-added resellers are also providing services in this market.<sup>220</sup> Similarly, we find that market shares may misstate the competitive significance of existing firms and new entrants.<sup>221</sup> Large interexchange carriers and the BOCs currently have the biggest share of the market, but they are not the only providers competing for these customers. We find that a large number of carriers compete in this market (even though the market shares of some may be small), and that these multiple competitors ensure that there is sufficient competition.<sup>222</sup> For example, in the state of Illinois, although the combined market share of the merged entity with respect to the mid-sized and large enterprise customers will be [REDACTED] percent of interLATA voice services, five competitors each individually capture from [REDACTED] to [REDACTED] percent of the market, with the rest of the other competitors capturing the remaining [REDACTED] percent.<sup>223</sup> Similarly, in California, the

<sup>217</sup> Data services include [REDACTED]. AT&T Info. Req., ATT516000531-49.

<sup>218</sup> The Applicants include statements from a representative from Illinois-based Servicemaster, stating that it recently released an RFP to six carriers, but it could have gone out to 15-20 more, including Broadwing, Global Crossing and Level 3. See SBC/AT&T Reply at 117. SBC also explains that VoIP and VPN providers are emerging threats to traditional communications carriers. Additionally, within the past two years, equipment providers such as Nortel, Avaya and Cisco have been invited to bid on enterprise service contracts. SBC/AT&T Bazzi Reply Decl. at para. 26. SBC asserts that "enterprises are beginning to test the approach of relying on traditional telecommunications carriers for basic IP connections and turning to equipment providers to supply them with premise equipment and installation and maintenance services necessary to obtain their voice and data services more cheaply." *Id.*

<sup>219</sup> SBC/AT&T Reply at 110.

<sup>220</sup> SBC/AT&T Application at 72; *id.*, App. B, ("Description of Competitors"). As discussed in prior Commission orders, there are numerous types of business models supporting competition for enterprise customers. Some competitive LECs market integrated voice and data services to enterprise customers, primarily through leasing high-capacity loops from the BOCs as UNEs or special access and then using the loops to provide a bundled offering including voice, data and Internet access. See *Triennial Review Order*, 18 FCC Rcd at 17014, para. 48 n.159 (observing that companies such as ITC^Deltacom, NewSouth and Cbeyond have focused on providing integrated services to the business market).

<sup>221</sup> SBC/AT&T Reply at 110. According to the Applicants, "[h]istorical and current market shares obviously overstate SBC's local 'market power' because they reflect its historical position in local market prior to the 1996 Act." *Id.*

<sup>222</sup> See Confidential Appendix C.

<sup>223</sup> See Confidential Appendix C, Table 2 (citing Illinois interLATA market shares of [REDACTED]). The Applicants explain that MCI, Qwest, and Sprint will still have a large presence. In addition, Time Warner, Comcast, and other cable companies with new capabilities not dependent on the copper-based telephone network will compete, along with systems integrators like EDS and IBM. The Applicants also note that "shares may misstate the (continued....)



merged entity's combined market share of high-cap data services for mid-sized and large enterprise customers will be [REDACTED] percent, but five competitors each individually capture from [REDACTED] to [REDACTED] percent of the market, with the rest of the carriers capturing the remaining [REDACTED] percent.<sup>224</sup> Thus, we find that sufficient enterprise competition remains within SBC's region to ensure that the merger is not likely to result in anticompetitive effects for medium and large in-region enterprise customers.

74. Although we find that medium-sized and large enterprise customers with national, multi-location operations do not have as many competitive options, we nevertheless conclude that this merger is unlikely to cause competitive harm to this market. First, SBC's pre-merger presence in this market is nascent, and thus, the post-merger market will have virtually as many competitors as before.<sup>225</sup> Second, as further discussed below, given their size and geographically-dispersed operations, these customers are highly sophisticated and negotiate for significant discounts.<sup>226</sup> We find that systems integrators and the use of emerging technologies are likely to make this market more competitive, and that this trend is likely to continue in the future.<sup>227</sup> Further, we note that the merger could bring even more competition for these customers because the merged company will offer a true end-to-end solution to businesses, which in turn, will likely improve quality and could create cost savings.<sup>228</sup>

75. As noted above, we find, consistent with the Commission's prior conclusions, that mid-sized and large enterprise customers tend to be sophisticated purchasers of communications services, whether they are located solely within SBC's region, or have locations both inside and outside SBC territory.<sup>229</sup>

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competitive significance of existing firms and new entrants." SBC/AT&T Reply at 110. Accordingly, contrary to commenters' assertions, we find that competition in the enterprise market is robust.

<sup>224</sup> See Confidential Appendix C, Table 3 (citing California high-cap data service market shares of [REDACTED]).

<sup>225</sup> See *supra* note 192; see also SBC/AT&T Bazzi Reply Decl. at paras. 19-24. We discuss below claims that SBC is a potential competitor in the GTS market. See *infra* Part V.G.3.c (U.S. International Services Competition – Global Telecommunications Services).

<sup>226</sup> See also AT&T/SBC Bazzi Reply Decl. at paras. 3, 7-12. SBC explains that larger enterprise customers typically use "strategic sourcing" in order to exert greater control, lower costs, and increase quality. *Id.* at para. 11. SBC also explains that the "the suppliers in this marketplace recognize the intense level of competition and have a strong business imperative to maintain revenue from their existing customers. The very process of competitive bidding and contract renegotiation is often sufficient to create the perception with a vendor of a credible threat of losing an existing customer, compelling the supplier to offer lower prices and improved service to retain the customer." *Id.* at para. 17.

<sup>227</sup> For example, systems integrators acquire and combine telecommunications equipment and various wholesale transmission services to provide and manage complex voice and data services for enterprise customers. See, e.g., SBC/AT&T Application at 83-85; see also *supra* note 218. In addition, SBC cites an InStat/MDR study that forecasts that emerging services will grow at a greater than 30% annual rate over the next several years. SBC/AT&T Bazzi Reply Decl. at para. 27.

<sup>228</sup> See SBC/AT&T Application at iii, 35-36, 39-44; SBC/AT&T Reply at 126, 129-30; SBC/AT&T Application, Declaration of Hossein Eslambolchi (SBC/AT&T Eslambolchi Decl.) at paras. 18-20; SBC/AT&T Kahan Decl. at paras. 33-37; SBC/AT&T Rice Decl. at paras. 8, 14, 18.

<sup>229</sup> *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd 5880, 5887, para. 39 (1991) (*Interexchange Competition Order*); see also *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14096, para. 120; *SBC/SNET Order*, 13 FCC Rcd at 21301, para. 20; *AT&T/TCG Order*, 13 FCC Rcd at 15250, para. 27; *WorldCom/MCI Order*, 13 FCC Rcd at 18073-74, paras. 84-87. ACN *et al.* argue that no degree of sophistication (continued....)

These users tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.<sup>230</sup> This is significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice about service offerings and prices.<sup>231</sup> Thus, so long as competitive choices remain in this market, these classes of customers should seek out best-priced alternatives, and the merged entity should not be able to raise and maintain prices above competitive levels.

76. Finally, although small enterprise customers may not possess the same level of sophistication as their larger counterparts, we nonetheless find that the merger is not likely to result in anticompetitive effects for this group of customers. We base our conclusion largely on the fact that AT&T has ceased to market to these customers and has reduced its small enterprise business operations. As discussed elsewhere in this Order, evidence in this proceeding clearly indicates that AT&T determined that these types of services no longer presented a viable business opportunity, and that it has taken steps to close down its operations.<sup>232</sup> Thus, AT&T's gradual withdrawal from this market is due to its own internal decisions and would have occurred notwithstanding SBC's offer to acquire it. Moreover, we find that intermodal competition from cable telephony and mobile wireless service providers, and providers of certain VoIP services will likely continue to provide these customers with viable alternatives.<sup>233</sup>

77. In conclusion, although we find overlap between the Applicants' enterprise operations, we do not find that the increase in concentration resulting from the merger is likely to result in anticompetitive

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can alleviate the problems caused by market concentration when there are no competitive alternatives. ACN *et al.* Comments at 11. We reject this argument in this context because, as discussed above, we find that there are adequate numbers of competitors in the enterprise market.

<sup>230</sup> *Interexchange Competition Order*, 6 FCC Rcd at 5887, para. 39; see also *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3306, para. 65 (1995) (*AT&T Non-Dominance Order*) (finding that business customers have highly elastic demands, and that business customers routinely request proposals from carriers other than AT&T and accord full consideration to these proposals); *WorldCom/MCI Order*, 13 FCC Rcd at 18064, para. 65 (finding that larger business customers are knowledgeable consumers that will have competitive alternatives to the largest three incumbents).

<sup>231</sup> *Interexchange Competition Order*, 6 FCC Rcd at 5887, para. 39. Moreover, the Commission found that name recognition and goodwill are less significant in markets where customers tend to be sophisticated and aware of the choices available to them. *Id.* at para. 41. Evidence in the record indicates that there are at least 20 consulting firms that provide communications sourcing services, and when engaged, customers are able to achieve an annual average reduction of 27% (relative to their pre-engagement annual spend) in the cost of the communications services within the scope of the procurement process, with savings ranging from 2% to 63%. SBC/AT&T Bazzi Reply Decl. at paras. 13, 15.

<sup>232</sup> See *infra* Part V.D (Mass Market Competition).

<sup>233</sup> SBC/AT&T Reply at 122 n.383. Applicants report that small and medium businesses are proving to be a lucrative market for IP telephony growth opportunities in the long run. *Id.* (citing Frost & Sullivan, North American Enterprise IP Telephony Systems Markets, 5-1 (2005)). Applicants also state that several manufacturers, including Avaya, Cisco, Siemens, Mitel, Alcatel, and Alitgen have recently introduced products aimed specifically at small and medium businesses. *Id.* One study find that 73% of small businesses use wireless services, and that 25% of all small businesses spend more on wireless services than on local and long distance services combined. *SBA Telecom Report* at ii, 43.

effects in this market. As discussed above, the record shows that, for all groups of business customers, there are multiple services and multiple providers that can meet their demand.<sup>234</sup>

78. *Coordinated Effects.* We find that the merger will not increase the likelihood of tacit collusion or other coordinated behavior in relevant markets. On the contrary, we find that, even if competitors reached tacit agreements in the enterprise market, there are strong incentives to cheat and scant ability to detect and punish such cheating. Specifically, the high value of enterprise contracts will create significant incentives for many competitors – particularly those with smaller market shares – to cheat on tacit agreements. Moreover, detection and punishment would be significantly frustrated by the facts that enterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants), that contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), that contracts are generally for customized service packages, and that the contracts usually remain in effect for a number of years. Accordingly, we find no basis to conclude that the merger increases the likelihood of tacit collusion or other coordinated effect in the relevant markets in SBC's region.<sup>235</sup>

79. *Mutual Forbearance.* We reject commenters' assertions that this merger would reinforce the BOCs' historical reluctance to compete with each other.<sup>236</sup> First, we find it highly unlikely that the companies would engage in mutual forbearance with respect to large national enterprise customers, given the significant revenue opportunities associated with serving those customers. For example, SBC already provides service to such large customers as the American Red Cross, which has its headquarters in the Verizon region.<sup>237</sup> Second, even if commenters are correct with respect to medium and large in-region enterprise customers, we find, as discussed above, that there will be sufficient competition based on the

<sup>234</sup> We note that filings in this proceeding offer the opinions of various enterprise customers expressing either support for, or concern about, the proposed merger. See, e.g., SBC/AT&T Reply, Attach. Customer Statements (providing the statements of a number of enterprise customers supporting the merger); Letter from Thomas Cohen, Counsel for Alliance for Competition in Telecommunications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65, Attach. (filed Sept. 13, 2005) (citing survey of 100 Fortune 1000 businesses regarding whether they have concerns about the SBC/AT&T and Verizon/MCI proposed mergers). We conclude that none of these filings provide representative or reliable evidence regarding enterprise competition for any particular class or classes of enterprise customers nor do they provide clear evidence regarding particular services offered in particular geographic markets. Thus, we do not rely on any of these filings in our analysis.

<sup>235</sup> See SBC/AT&T Application at 7-8. While some commenters express concern that the merged company will use its role as a wholesale provider to obtain information to aid tacit collusion, we find such coordination to be unlikely given the characteristics of enterprise customers discussed above. Moreover, we find that even without the merger with AT&T, SBC is a major supplier of special access services, and thus it already has the ability to engage in such anticompetitive conduct. Accordingly, this concern is not merger specific. See CompTel/ALTS Petition at 25.

<sup>236</sup> ACN *et al.* Comments at 29, 37-38, 47-48; Broadwing and SAVVIS Petition at 18-26; Cbeyond *et al.* Petition at 4, 18, 44-46, 54-57; CompTel/ALTS Petition at 6; New Jersey Ratepayer Advocate Comments at 16; Qwest Petition at 39-44. For example, Cbeyond *et al.* argue that, if SBC were to compete in another BOC's market, the other BOC would likely react by reducing its retail prices and increasing its wholesale rates. Consequently, SBC would react in-kind in its region. "The result is a net loss to both firms, as prices are forced down while average costs increase." Cbeyond *et al.* Petition at 44.

<sup>237</sup> SBC/AT&T Reply at 138. In addition, the record indicates that SBC has invested over \$1 billion in improvements to its out-of-region network which can be used to serve out-of-region customers; it has at least [REDACTED] out-of-region customers; and it provides enterprise service to 30 out-of-region MSAs, with collocation facilities in at least 10 central offices in each MSA. SBC/AT&T Reply at 136-38; SBC Info. Req., SBC255592-621 at 255598.

competitors that remain in the market. Finally, with respect to small enterprise customers, we have already discussed AT&T's announced gradual withdrawal from this market, and we conclude, based on the record, that it was not exerting significant competitive pressure with respect to those customers prior to the announcement of the merger. In those markets, as discussed above, we find that intermodal competition from cable telephony service providers, mobile wireless service providers, and VoIP service providers will likely continue to provide these customers with viable alternatives.<sup>238</sup>

#### **b. Vertical Effects**

80. We reject commenters' concerns about their continued ability to serve enterprise customers in SBC's franchise region because the merger will make them more reliant on SBC's facilities.<sup>239</sup> We address these arguments in our analysis of the wholesale special access market, and in other sections of this Order.<sup>240</sup> In addition, we reject commenters' assertions that SBC's acquisition of AT&T's interexchange network will lead the merged entity to discriminate against its rivals who rely upon this network for essential inputs used to serve their own enterprise customers.<sup>241</sup> We find, as discussed below, that the merged entity would be unable to increase rivals' costs due to the presence of extensive competitive national wholesale interexchange networks with excess capacity.<sup>242</sup> Thus, we find that the merger is not likely to result in anticompetitive effects for wholesale inputs used to serve enterprise customers.

#### **D. Mass Market Competition**

81. In this section, we consider the effects of the proposed merger on local service; long distance service; and bundled local and long distance service provided to mass market customers. As discussed below, we find that SBC's acquisition of AT&T is not likely to result in anticompetitive effects for mass market services.

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<sup>238</sup> See *supra* note 233.

<sup>239</sup> See, e.g., ACN *et al.* Comments at 39-40; Broadwing and SAVVIS Petition at 28-29; Cbeyond *et al.* Petition at 24-30; CompTel/ALTS Petition at 21-35; Cox Comments at 13-17; United States Cellular Comments at 2-4; Global Crossing Comments at 15-16; T-Mobile Reply at 7-14.

<sup>240</sup> See *supra* Part V.B (Wholesale Special Access Competition); *infra* Part V.E (Internet Backbone Competition).

<sup>241</sup> Qwest Petition, Declaration of B. Douglas Bernheim (Qwest Bernheim Decl.) at paras. 90-91 (arguing that after the merger, SBC will control access to AT&T's network and have increased incentives and ability to discriminate and increase rivals' costs).

<sup>242</sup> See *infra* Part V.F (Wholesale Interexchange Competition); cf. *Qwest Communications International Inc., and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, Memorandum Opinion and Order, 15 FCC Rcd 5376, 5398, para. 42 (2000) (*Qwest/U S West Order*) (finding, in the context of the *Qwest/U S West* merger, that an incumbent LEC has no more incentive to degrade the "access it provides to competing interexchange carriers whether the incumbent LEC is providing . . . [interexchange] service over facilities it constructed or [whether] it purchased [them] from another carrier").

## 1. Relevant Markets

### a. Relevant Product Markets

82. Based on the record in this proceeding, we identify three relevant product markets for our mass market analysis: (1) local service; (2) long distance service; and (3) bundled local and long distance service.<sup>243</sup> In previous wireline mergers, the Commission focused on local and long distance services.<sup>244</sup> Based on recent market and technological developments, including increased subscription to mobile wireless service and VoIP services that provide a bundle of local and long distance services, we find it appropriate to refine our market analysis, including defining a separate relevant product market for bundled local and long distance service.

83. The Commission defines product markets from the perspective of customer demand.<sup>245</sup> We thus begin our analysis by recognizing two types of consumer demand for communications services: (1) demand for “access” and (2) demand for “usage.” The consumer demands “access” from a provider so as to be able to connect to a communications network.<sup>246</sup> Depending upon the type of access chosen by the consumer, the consumer will be able to connect to a wireline telephone network, a mobile wireless network, or the Internet.<sup>247</sup>

84. Because a consumer can choose multiple access providers, his demand for usage, *i.e.*, how much of a service he consumes, will be determined by his particular set of access provider(s) as well as the terms of service associated with the consumer’s chosen access provider(s). For example, consider a consumer’s options for long distance service.<sup>248</sup> For expositional purposes, we assume that consumer subscribes to a wireline long distance service and a mobile wireless service. This consumer could choose to place a long distance call using a presubscribed long distance carrier, a dial-around alternative such as a prepaid calling card, or his mobile wireless service, but, how he views the alternatives would be

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<sup>243</sup> The Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services. *See, e.g., WorldCom/MCI Order*, 13 FCC Rcd at 18040, para. 24; *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 68. The Commission addresses international mass market voice services, along with other international services in Part V.G of this Order.

<sup>244</sup> *See, e.g., WorldCom/MCI Order*, 13 FCC Rcd at 18040, para. 25; *SBC/Ameritech Order*, 14 FCC Rcd at 14745, para. 66.

<sup>245</sup> *See, e.g., EchoStar/DirecTV Order*, 17 FCC Rcd at 20605-06, para. 106.

<sup>246</sup> The access provider usually charges a recurring monthly fee, and it frequently offers various communications services in combination with this access service.

<sup>247</sup> Mass market customers can purchase access to communications services from a single provider, such as a local telephone company, a mobile wireless provider, or cable provider; or from multiple providers. For example, approximately 52% of U.S. households subscribe to both a wireline provider and a mobile wireless provider, and an increasing percentage of consumers are choosing to subscribe to a broadband Internet access service. *See* Clyde Tucker, J. Michael Brick, Brian Meekins, and David Morganstein, Household Telephone Service and Usage Patterns in the United States in 2004, page 4, available at <http://www.bls.gov/ore/pdf/st040130.pdf> (Household Telephone Survey). About 20% of households subscribed to a broadband service in 2003. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at 2-11 (Apr. 2005) (*Trends in Telephone Service*) (citing *A Nation Online: Entering the Broadband Age*, U.S. Department of Commerce (Sept. 2004)).

<sup>248</sup> A consumer desiring to place an international call would have similar options.

affected by the terms of the particular service plans he has chosen. If he subscribes to a wireline long distance plan that charges a flat monthly fee for unlimited calling, he may be less likely to use an alternative service (such as a prepaid calling card or mobile wireless) because the marginal cost of each long distance minute for his wireline service is zero. In contrast, if he subscribes to a wireline long distance plan that charges a low monthly fee and a relatively high per-minute charge, the marginal cost of each long distance minute is the per-minute charge, and he might be more willing to consider alternative usage options (such as prepaid calling cards or mobile wireless) when placing long distance calls. For example, he could allocate calls among different service providers based on the terms of service plans by using the wireline phone for long distance calls made during peak hours (e.g., week days) and the mobile wireless phone for long distance calls made during off-peak hours (e.g., evenings and weekend days) when the price per minute may be zero. Accordingly, we consider both access demand and usage demand in defining our relevant product markets of local service, long distance service, and bundled local and long distance service because these decisions play a role in whether consumers view products as reasonable substitutes (meaning that those services are in the same product market for purposes of our analysis).<sup>249</sup>

#### (i) Local Service

85. Based on record evidence, we define the market for local service to include not only wireline local service, but also certain types of VoIP service to the extent that consumers view them as close substitutes for wireline local service. In addition, the record evidence suggests that for certain categories of customers, mobile wireless service is viewed as a close substitute to wireline local service.<sup>250</sup>

86. *VoIP*. VoIP services are being provided to consumers in a variety of ways today. The degree to which particular VoIP services are viewed as close substitutes to other local services varies depending upon the characteristics of the VoIP offering. For purposes of our analysis we find it useful to divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) “over-the-top” VoIP providers. For purposes of this proceeding, we define facilities-based VoIP providers, such as certain cable VoIP providers, as providers that own and control the last mile facility. These providers may own or lease the switching and transmission networks that are used to carry VoIP calls.<sup>251</sup> Other kinds of

<sup>249</sup> See, e.g., *EchoStar/DirectTV Order*, 17 FCC Rcd at 20606, para. 106 (“In other words, when one product is a reasonable substitute for the other in the eyes of consumers, it is to be included in the relevant product market even though the products themselves are not identical.”) We note that the evidence in the record is insufficient for us to perform a quantitative demand analysis to estimate the likely consumer response to a small but significant change in the price of a particular service. Instead, we consider indicia of demand substitution between possible services, including: (1) the attributes and relative prices of possible competing services; (2) evidence that consumers view the possible competing services similarly, and have shifted or have considered shifting purchases between these services in response to relative changes in price or other competitive variables; (3) evidence that service providers consider the prospect of buyer substitution between services in response to relative changes in price or other competitive variables; and (4) the costs a consumer could incur to substitute between traditional services and services provided on an alternative platform. See *DOJ/FTC Guidelines* at § 1.11.

<sup>250</sup> Circuit-switched cable telephony service traditionally has been included within the Commission’s assessment of local services competition, and the record here gives us no reason to change that approach.

<sup>251</sup> These VoIP providers typically have dedicated facilities, transport calls over their own or a private network, and may have a backup power source in the event of a service disruption. See, e.g., John K. Billock, Vice Chairman and Chief Operating Officer, Time Warner Cable, Testimony before the Federal Communications Commission at 3 (Dec. 1, 2003) available at <http://www.fcc.gov/voip/presentations/billock.doc>; *Long Distance Calling Plan: Local, Regional and Long Distance Calling Plans from Optimum Voice* (visited Sept. 14, 2005) available at [http://www.optimumvoice.com/index.jhtml?pageType=what\\_is\\_it;Phone Services – Optimum Voice](http://www.optimumvoice.com/index.jhtml?pageType=what_is_it;Phone%20Services%20-%20Optimum%20Voice) (visited Sept. (continued....))

VoIP providers not meeting this definition are referred to as “over-the-top” VoIP providers. This type includes those providers that require the end user to obtain broadband transmission from a third-party provider, and such VoIP providers can vary in terms of the extent to which they rely on their own facilities. As discussed below, the record indicates that mass market consumers view facilities-based VoIP services as sufficiently close substitutes for local service to include them in the relevant product market. The record is insufficient to determine which over-the-top VoIP services should be included in the relevant product market, however. We thus reject the Applicants’ assertion that all VoIP offerings should be included in the relevant product market.<sup>252</sup>

87. Based upon the information in this record, we find that facilities-based VoIP services clearly fall within the relevant service market for local services. Facilities-based VoIP services have many similar characteristics to traditional wireline local service.<sup>253</sup> There is also significant evidence in the record indicating that mass market subscription to cable-based VoIP continues to increase nationwide<sup>254</sup> as cable operators continue to roll out these services throughout their footprints.<sup>255</sup> In addition, there is documentary evidence that SBC views cable-based VoIP as its primary competitive threat in the mass market, and considers the prospect of consumer substitution to cable-based VoIP when devising its strategies and service offers.<sup>256</sup> While we recognize that facilities-based VoIP services may not be available ubiquitously in SBC’s territory, our product market analysis does not require that all mass

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20, 2005) available at [http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std\\_adp.php?p\\_faqid=261](http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std_adp.php?p_faqid=261); National Cable and Telecommunications Association, *Cable Telephony: Offering Consumers Competitive Choice* at 5-7 (July 2001) available at [http://www.ncta.com/pdf\\_files/Telephony\\_ReportComplete.pdf](http://www.ncta.com/pdf_files/Telephony_ReportComplete.pdf); Cox Communications, *Whitepaper: Preparing for the Promise of Voice-over Internet Protocol (VoIP)* at 5-8 (Feb. 2003) available at <http://www.cox.com/PressRoom/supportdocuments/VOIDwhitepaper.pdf> (Cox White Paper).

<sup>252</sup> See, e.g., SBC/AT&T Carlton/Sider Decl. at paras. 26-29 (asserting that all VoIP services should be included in the relevant product market).

<sup>253</sup> These similar characteristics include: installation by the provider; the lack of a requirement for a broadband subscription; and connection to the consumer’s home inside wiring, which permits use of all of the household’s traditional wireline and cordless handsets. See, e.g., Consumer information provided by Cablevision (visited Sept. 14, 2005) available at [http://www.optimumvoice.com/index.jhtml?pageType=what\\_is\\_it](http://www.optimumvoice.com/index.jhtml?pageType=what_is_it); <http://www.optimumvoice.com/index.jhtml?pageType=wiring>; [http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std\\_adp.php?p\\_faqid=258](http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std_adp.php?p_faqid=258); [http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std\\_adp.php?p\\_faqid=262](http://optimumvoice.custhelp.com/cgi-bin/optimumvoice.cfg/php/enduser/std_adp.php?p_faqid=262).

<sup>254</sup> For example, between June 2004 and June 2005, Cablevision’s subscriber base grew from 115,048 to 475,357 and its penetration rate increased from 3% to 11%. Similarly, between March 2005 and June 2005, Time Warner’s subscriber base grew to 614,000 customers (a 60% increase). Cablevision Systems Corporation Reports Second Quarter 2005 Results, Aug. 9, 2005; Time Warner Second Quarter 2005 Results, Aug. 3, 2005.

<sup>255</sup> For example, in December 2004, Time Warner completed its launch of residential IP telephony service in all of its divisions across the country, while by the end of 2005 Cox will have completed its rollout of digital telephone service to 70% of its footprint. “Highlights: A Quarterly Overview of Key Developments at Time Warner and its Businesses,” Time Warner Release, Feb. 3, 2005; “Cox Names New 2005 Telephony Markets,” Cox Press Release, Aug. 1, 2005; SBC Info. Req., SBC232290-306.

<sup>256</sup> See, e.g., SBC/AT&T Application at 46, 58-61; SBC/AT&T Reply at 95-96; SBC Info. Req., SBC223687-716; SBC420677-420703; SBC224397 at 224400 ([REDACTED]); SBC39337 at 39338 ([REDACTED]); SBC22807-42 at 22813-15 ([REDACTED]); see also SBC Info. Req., SBC218651 at 218720-22 ([REDACTED]); SBC76809-76856; SBC122201-03; SBC148115-187; SBC22807-842.

market consumers would be willing or able to substitute VoIP service for wireline local service, or even that it be widely available for it to be included in the relevant product market.<sup>257</sup> Rather, our product market definition analysis only requires evidence of sufficient demand substitutability in those geographic markets where facilities-based VoIP service is available.

88. The record is inconclusive regarding the extent to which various over-the-top VoIP services should be included in the relevant product market for local services. The record indicates that there are a wide variety of methods by which over-the-top VoIP providers offer service. The varieties of over-the-top VoIP differ significantly in their service characteristics,<sup>258</sup> including quality of service<sup>259</sup> and price.<sup>260</sup> The extent to which consumers view these services as substitutes for traditional wireline local service may vary based on these differences.<sup>261</sup> In addition, the requirement that a customer have broadband access to be able to use certain over-the-top VoIP services affects the substitutability of those services with wireline local service. Specifically, for customers that do not already have broadband access service, the subscription fee to obtain broadband access must be added to the subscription price for the over-the-top VoIP service when weighing it against the price of traditional wireline local service, and the extra fee could make substitution uneconomical.<sup>262</sup> Even for consumers that have broadband service,

<sup>257</sup> See, e.g., NASUCA Comments at 11-12; Cbeyond *et al.* Wilkie Decl. at para. 45; Nevada DOJ Comments at 6-7.

<sup>258</sup> Some over-the-top VoIP services require a consumer to have a computer and to install the software on his computer; others may require the purchase of specialized telephone handsets; and some require specialized equipment such as terminal adapters. See, e.g., *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22407-08, paras. 8-9 (2004) (*Vonage Order*); *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion, 19 FCC Rcd 3307, 3309-10, paras. 5-6 (2004) (*Pulver Order*).

<sup>259</sup> For example, an over-the-top VoIP provider's ability to assure a particular quality of service could vary depending upon whether it has its own IP switches and long-haul fiber (or a virtual private network (VPN)), or whether it relies on the public Internet to carry subscribers' communications.

<sup>260</sup> The pricing for over-the-top VoIP services varies with the service's attributes, such as whether the service permits the consumer to connect to the PSTN. In addition, VoIP providers offer different rate structures: some charge on a per-minute basis for long distance calls; some charge a fixed monthly fee for unlimited local and long distance calling; some offer multipart plans with baskets of minutes; and others offer their service for free. For example, for calling anywhere in the U.S., Canada, or Puerto Rico, Vonage offers a basic 500 minute plan for \$14.99 and an unlimited calling plan for \$24.99. See <http://www.vonage.com> (visited Sept. 1, 2005). Skype offers unlimited free PC to PC calling and a pay-per-call PC to phone service on a per-minute basis. See <http://www.skype.com> (visited Sept. 1, 2005); see also <http://www.ordervoip.com> (visited Sept. 1, 2005).

<sup>261</sup> See, e.g., Texas OPC Comments at 6; Nevada DOJ Comments at 6-7; Missouri OPC Reply at 14-15; NASUCA Comments at 11-12; Cbeyond *et al.* Wilkie Decl. at para. 45; ACN *et al.* Petition at 16-18; Consumer Federation *et al.* Petition at 16-17; Qwest Bernheim Decl. at paras. 82-83.

<sup>262</sup> About 20% of households subscribed to a broadband service in 2003. *Trends in Telephone Service* at 2-11 (April 2005) (citing *A Nation Online: Entering the Broadband Age*, U.S. Department of Commerce (September 2004)). These consumers or others that have decided to subscribe to a broadband service for other reasons may be more willing to consider over-the-top VoIP services than consumers without broadband service. Where a consumer has already subscribed to broadband, the cost of the broadband subscription would not be viewed as part of the incremental cost of subsequently subscribing to the VoIP service. SBC Info. Req., SBC224397 at 224400 ([REDACTED]); "Forrester Research: The State of Consumer Technology Adoption: Survey of More Than 68,000 Households Reveal How Consumers Adopt and Use Technology," Business Wire, Aug. 2, 2005; Stephanie Kirchaessner and Paul Taylor, "The Americas: FCC's Easing of Internet Service Rules Welcomed," Financial (continued....)



however, their willingness to subscribe to over-the-top VoIP service in lieu of wireline local service will vary with the attributes of the service and the consumer's willingness to trade off service characteristics for lower prices. Thus, while it is likely that some proportion of mass market consumers may view certain over-the-top VoIP services as substitutes for wireline local service, there is insufficient information in the record to determine which types of over-the-top VoIP service should be included in the product market. Consequently, in order to be conservative in our structural analysis, we exclude these services from the relevant product market in our structural analysis.<sup>263</sup>

89. *Mobile Wireless Service.* We find that mobile wireless service should be included in the local services product market when it is used as a complete substitute for all of a consumer's voice communications needs.<sup>264</sup> On the one hand, increasing numbers of mass market customers are subscribing to mobile wireless services,<sup>265</sup> thus providing an additional access option for making local telephone calls.<sup>266</sup> On the other hand, we recognize that the average cost for mobile wireless service appears to be higher than for wireline local service.<sup>267</sup> In addition, while most customers making wireline local calls face a per-minute cost of zero (because they can make unlimited local calls for a flat monthly

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Times USA, Aug. 6, 2005. Time Warner reports a 22% penetration rate for their own residential high-speed data service. The corresponding figures for Cox and Comcast are respectively, 27% and 19%. "Time Warner Reports Second Quarter 2005 Results," Time Warner Press Release, Aug. 3, 2005, at 1; Comcast Second Quarter 2005 Results, Financial Tables, Aug. 2, 2005; Cox Second Quarter 2005 Results, Suppl. Tables, Aug. 9, 2005. Texas OPC Comments at 5.

<sup>263</sup> We are not persuaded by commenters' claims concerning the importance of AT&T's over-the-top VoIP offering to this market. See, e.g., Cox Comments at 12-13; Missouri OPC Reply at 6-7; Consumer Federation *et al.* Petition at 10-11. AT&T has few VoIP subscribers ([REDACTED] nationwide); thus we cannot find that AT&T is a significant provider of this service. SBC/AT&T Reply, Declaration of Cathy Martine (SBC/AT&T Martine Reply Decl.) at para. 9. Given the limited significance of AT&T's provision of mass market VoIP services, we reject the concerns of commenters that the merger increases SBC's incentive or ability to discriminate against competitive VoIP offerings using its wireline and wireless facilities and operations. See, e.g., Vonage Comments at 6-8, 12-13 (expressing concern about VoIP providers' access to tandem switches, E911 facilities, white pages listings, and wireless Internet platforms); Global Crossing Comments at 22-24 (expressing concern about VoIP providers' interconnection, intercarrier compensation, and switched access rights and obligations).

<sup>264</sup> The Commission previously found that, although wireline services do not have a price constraining effect on mobile wireless services, some consumers may find that mobile wireless services are a good substitute for wireline services. *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21558, paras. 73-74. As we discuss below, we include mobile wireless services in the long distance service market to some extent as well.

<sup>265</sup> See, e.g., Household Telephone Survey at Figures 1, 2.

<sup>266</sup> See *id.* at Table B.

<sup>267</sup> The Commission reports that the average monthly household expenditure for billed wireline local telephone service is \$37. Leap Wireless is the largest provider of wireline replacement plans. It offers unlimited local calling for \$35-\$40 per month, but it only offers service in portions of 20 states. The price of a mobile wireless plan with sufficient anytime minutes to accommodate the typical calling needs of a wireline consumer generally costs between \$50-\$60, which may make it not price competitive for consumers. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, Ninth Report, 19 FCC Rcd 20597, 20685, para. 215 (2004) (*Ninth CMRS Competition Report*); *Tenth CMRS Competition Report*, WT Docket No. 05-71, Tenth Report, FCC 05-173 at paras. 198-200 (rel. Sept. 30, 2005) (*Tenth CMRS Competition Report*); *Trends in Telephone Service* at 3-4 (April 2005); Texas OPC Comments at 5; NASUCA Comments at 12.

fee), many wireless customers must pay per-minute fees when making local calls with their wireless phones.<sup>268</sup>

90. Considering consumer behavior more closely, the record reveals that growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service in lieu of wireline local services. Evidence indicates that, overall, approximately 6 percent of households have chosen to rely upon mobile wireless services for all of their communications needs.<sup>269</sup> Recent research sponsored by the Bureau of Labor Statistics reveals that for certain segments of the U.S. population, a significantly higher percentage of households rely solely on mobile wireless services (e.g., single person households (8.1 percent), adults between the ages of twenty-five and thirty-four (10.3 percent), and single individuals (11.1 percent)).<sup>270</sup> We also find that SBC considers this growing substitution in developing its marketing, research and development, and corporate strategies for its local service offerings.<sup>271</sup> Finally, we base our finding on the Commission's determination in the *Sprint/Nextel Order* that Sprint/Nextel, after the merger, would likely take actions that would increase intermodal competition between wireline and mobile wireless services,<sup>272</sup> as well as Sprint's plans to focus its efforts on encouraging consumers to "cut the cord."<sup>273</sup> Accordingly, our expectation is that intermodal competition between mobile wireless and wireline service will likely increase in the near term.<sup>274</sup> Even if most segments of the mass market are unlikely to rely upon mobile wireless services in lieu of wireline local services today,<sup>275</sup> as discussed above, our product market analysis only requires that there be evidence of sufficient substitution for significant segments of the mass market to consider it in our analysis.<sup>276</sup> Based on the factors discussed in this section, we conclude that mobile wireless services should be included

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<sup>268</sup> Many consumers have mobile wireless plans in which they are assessed a per-minute charge for each incoming and outgoing call (e.g., prepaid calling plans). Other consumers subscribe to mobile wireless plans with a limited number of anytime minutes with the result that they may incur overage charges for minutes in excess of their allotted anytime minutes. See, e.g., *Tenth CMRS Competition Report* at paras. 99-100; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21613-14, para. 240.

<sup>269</sup> Household Telephone Survey at Table A.

<sup>270</sup> *Id.* at Tables A, B.

<sup>271</sup> In the *Cingular/AT&T Wireless Order*, the Commission determined that SBC considered the prospect of consumers' subscription to wireless services in lieu of wireline services when engaging in research and development of corporate strategies and market offerings. *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21614, para. 241. We find similar evidence in this proceeding. See, e.g., SBC Info. Req. SBC223687 at 223689, 223697, 223699; SBC224397 at 224399, 224401-02.

<sup>272</sup> *Sprint/Nextel Order*, FCC 05-148 at paras. 141-43.

<sup>273</sup> *Sprint Prepares to Cut the Cord*, WASHINGTON POST, June 6, 2005; SBC Info. Req., SBC88998 at 89002-03 ([REDACTED]).

<sup>274</sup> See, e.g., SBC Info. Req., SBC223687-716, SBC88998-89061, SBC120798-814.

<sup>275</sup> See, e.g., Texas OPC Comments at 5 (wireless is expensive compared to wireline and does not provide reliable 911 access); Nevada DOJ Comments at 6-7; Missouri OPC Reply at 13-14; NASUCA Comments at 11-12; Cbeyond *et al.* Petition at 31; ACN *et al.* Petition at 18-20; Consumer Federation *et al.* Petition at 17-18; Household Telephone Survey at Tables A, B; SBC Info. Req., SBC77525 at 77598.

<sup>276</sup> See, e.g., SBC Info. Req., SBC223687 at 223689, 223699 ([REDACTED]); SBC224397 at 224400.